

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 34514

STATE OF IDAHO,)	2008 Unpublished Opinion No. 683
)	
Plaintiff-Respondent,)	Filed: October 24, 2008
)	
v.)	Stephen W. Kenyon, Clerk
)	
MICHAEL JAMES CONFORTI,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Thomas Neville, District Judge.

Judgment of conviction for failure to register as a sex offender, affirmed; order denying motions for appointment of substitute counsel and to withdraw guilty plea, affirmed; order denying motion for reconsideration, affirmed.

Greg S. Silvey, Kuna, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Rebekah A. Cudé, Deputy Attorney General, Boise, for respondent.

PERRY, Judge

Michael James Conforti appeals from his judgment of conviction for failure to register as a sex offender, specifically challenging the district court's denial of his motion to dismiss. Conforti also appeals from the district court's orders denying his motions for appointment of substitute counsel, to withdraw his guilty plea, and for reconsideration. For the reasons set forth below, we affirm.

I.

FACTS AND PROCEDURE

In 1997, in Camas County Case Number CR-96-00031, Conforti pled guilty to sexual battery of a minor child sixteen or seventeen years of age. The district court withheld judgment and placed Conforti on probation for five years. Conforti was ordered to register as a sex offender. The plea agreement provided that, upon successful completion of probation, Conforti could petition the district court to set aside his guilty plea and dismiss the case pursuant to I.C. §

19-2604. Another provision of the plea agreement provided that, upon successful completion of probation, Conforti could petition the district court pursuant to I.C. § 18-8310 to expunge his duty to register pursuant to I.C. § 18-8301. The state agreed not to oppose such petitions. However, Conforti never petitioned the Camas County district court seeking any of the relief provided for in the plea agreement.

In 2004, in Ada County Case Number H0500128, Conforti was charged with failure to register as a sex offender, I.C. § 18-8307, and providing false information to law enforcement officers, I.C. § 18-5413. Conforti responded by filing a motion to dismiss Case Number CR-96-00031 in Camas County followed by an I.C.R. 33 motion to withdraw his guilty plea in that case. In April 2005, the district court in Camas County entered a purportedly *nunc pro tunc* order, effective from June 2002, terminating Conforti's sentence and dismissing Case Number CR-96-00031 with prejudice pursuant to I.C. § 19-2604. Additionally, the Camas County district court entered an order allowing Conforti to withdraw his guilty plea in Case Number CR-96-00031, reasoning that manifest injustice would otherwise result.

Conforti then filed a motion to dismiss Ada County Case Number H0500128. He argued that, because the underlying sex offense had been nullified, he could not be found guilty of failing to register as a sex offender. While the motion was pending, the Idaho Supreme Court decided *State v. Robinson*, 143 Idaho 306, 142 P.3d 729 (2006). Based on the Supreme Court's holding in *Robinson*, the district court denied Conforti's motion to dismiss. Conforti entered a conditional guilty plea to failure to register as a sex offender, and the state dismissed the charge for providing false information to law enforcement officers. The district court sentenced Conforti to a unified term of five years, with a minimum period of confinement of one year. The district court suspended sentence and placed Conforti on probation for five years.

Thereafter, Conforti filed pro se a motion for appointment of substitute counsel outside of the public defender's office and a Rule 33 motion to withdraw his guilty plea. The district court denied the motions, reasoning that the matter was currently on appeal, Conforti had appointed counsel, and he had failed to show that he was not capable of working since his release from jail. Furthermore, the district court denied Conforti's motion for appointment of substitute counsel because it was frivolous and because no grounds had been stated. Conforti filed a motion for reconsideration, which the district court denied. Conforti appeals.

II. ANALYSIS

A. Motion to Dismiss

Conforti argues that, because the Camas County district court dismissed Case Number CR-96-00031 pursuant to I.C. § 19-2604 and later granted his Rule 33 motion to withdraw his guilty plea, the underlying sex offense was rendered a nullity and that, therefore, he could not be found guilty of failure to register as a sex offender. Conforti attempts to distinguish this case from *Robinson*, in which the Idaho Supreme Court held that acts of leniency under I.C. § 19-2604 do not remove defendants from the registration requirements, by arguing that the Camas County district court allowed him to withdraw his previous guilty plea under Rule 33, not I.C. § 19-2604. *See Robinson*, 143 Idaho at 310, 142 P.3d at 733.

This Court exercises free review over the application and construction of statutes. *State v. Reyes*, 139 Idaho 502, 505, 80 P.3d 1103, 1106 (Ct. App. 2003). It is incumbent upon a court to give a statute an interpretation, which will not render it a nullity. *State v. Beard*, 135 Idaho 641, 646, 22 P.3d 116, 121 (Ct. App. 2001). Constructions of a statute that would lead to an absurd result are disfavored. *State v. Doe*, 140 Idaho 271, 275, 92 P.3d 521, 525 (2004); *State v. Yager*, 139 Idaho 680, 690, 85 P.3d 656, 666 (2004).

In *Robinson*, the Idaho Supreme Court held:

[T]he fact that a defendant later receives leniency under I.C. § 19-2604(1) does not remove him from the registration act. It does not matter what form the leniency takes, be it dismissing charges or allowing withdrawal of a guilty plea or both. . . . Regardless of whether the case is dismissed by terminating the sentence or by setting aside the guilty plea or conviction, the requirements that must be met before a trial court is authorized to dismiss a case under section 19-2604(1) are the same. If a case has been dismissed, there is no longer anything in which a judgment of conviction can stand; likewise, if a charge has been dismissed there no longer remains a conviction for that charge. An order purporting to dismiss a criminal case without vacating the conviction is invalid, and a guilty plea in a criminal case would necessarily be vacated once the dismissal in the underlying criminal case is final. This is true even if the order does not expressly state that the plea was being set aside.

Robinson, 143 Idaho at 310, 142 P.3d at 733. In this case, the Camas County district court dismissed Case Number CR-96-00031 with prejudice and terminated Conforti's sentence pursuant to I.C. § 19-2604. According to *Robinson*, at that point Conforti's guilty plea in that

case was also necessarily vacated, even if the Camas County district court failed to explicitly do so. Therefore, the subsequent order which purported to grant Conforti's motion to withdraw his guilty plea pursuant to Rule 33 was of no consequence. The question then becomes whether the Camas County district court's order granting leniency under I.C. § 19-2604 can relieve Conforti of the requirement that he register as a sex offender.

The Court in *Robinson* made it clear that district courts do not have the power, when granting leniency under I.C. § 19-2604, to relieve defendants of the obligation to register as a sex offender. The Court held that the legislature adopted specific criteria in I.C. § 18-8310 to be met in order for a defendant to be relieved of the registration requirements, thereby "ma[king] it clear that I.C. § 18-8310 is the only mechanism by which a sex offender can receive relief from the requirements of the registration act." *Robinson*, 143 Idaho at 310, 142 P.3d at 733. Thus, the Camas County district court in Case Number CR-96-00031 did not have the authority to relieve Conforti of the registration requirements absent compliance with I.C. § 18-8310. Therefore, the Ada County district court in this case did not err in denying Conforti's motion to dismiss the charge of failing to register as a sex offender.

B. Motions for Appointment of Substitute Counsel and to Withdraw Guilty Plea

Conforti argues that the district court abused its discretion by denying his motions for appointment of substitute counsel and to withdraw his guilty plea in Ada County Case Number H0500128.

1. Motion for appointment of substitute counsel

First we consider whether the district court erred in denying Conforti's motion for appointment of substitute counsel outside of the Ada County Public Defender's office. Conforti was represented by the public defender's office through sentencing. He was also represented by the State Appellate Public Defender's office on appeal. Therefore, by his motion he asked the district court to appoint substitute trial counsel. A district court's order denying a motion for substitute counsel is reviewed for an abuse of discretion. I.C. § 19-856; *State v. Clayton*, 100 Idaho 896, 897, 606 P.2d 1000, 1001 (1980). When a trial court's discretionary decision is reviewed on appeal, the appellate court conducts a multi-tiered inquiry to determine: (1) whether the lower court correctly perceived the issue as one of discretion; (2) whether the lower court acted within the boundaries of such discretion and consistently with any legal standards

applicable to the specific choices before it; and (3) whether the lower court reached its decision by an exercise of reason. *State v. Hedger*, 115 Idaho 598, 600, 768 P.2d 1331, 1333 (1989).

Idaho Code Section 19-856 governs requests for appointment of substitute counsel. That section reads, in pertinent part, that “at any stage, including appeal or other post-conviction proceeding, the court concerned may for good cause assign a substitute attorney.” *See also Clayton*, 100 Idaho at 897, 606 P.2d at 1001; *State v. Peck*, 130 Idaho 711, 713, 946 P.2d 1351, 1353 (Ct. App. 1997). Conforti’s motion requested that the district court “appoint counsel who is NOT a member of the office of the ADA COUNTY PUBLIC DEFENDER.” The motion contained no other allegation or support that good cause existed to appoint substitute counsel. Because Conforti made no showing of good cause for the district court to appoint substitute counsel, the district court did not abuse its discretion in denying Conforti’s motion.

2. Motion to withdraw guilty plea

In this case, the district court’s order denying Conforti’s motions provided:

This matter is currently on appeal for review. Defendant has appointed counsel. Matters in the trial court have concluded as of July 17, 2007. No showing has been made that Defendant is not capable of work since his release from jail on Sept. 24, 2007. Defendant’s Motion for Appointment of Counsel is DENIED in part because no one with money would spend such to prosecute this motion to withdraw plea. Moreover, Defendant’s Motion to Withdraw Plea is DENIED with prejudice, without a hearing, in part, because no grounds have been stated. So Ordered.

Whether to grant a motion to withdraw a guilty plea lies in the discretion of the district court and such discretion should be liberally applied. *State v. Freeman*, 110 Idaho 117, 121, 714 P.2d 86, 90 (Ct. App. 1986). Appellate review of the denial of a motion to withdraw a plea is limited to determining whether the district court exercised sound judicial discretion as distinguished from arbitrary action. *Id.* Also of importance is whether the motion to withdraw a plea is made before or after sentence is imposed. Idaho Criminal Rule 33(c) provides that a plea may be withdrawn after sentencing only to correct manifest injustice. The stricter standard after sentencing is justified to insure that the accused is not encouraged to plead guilty to test the weight of potential punishment and withdraw the plea if the sentence were unexpectedly severe. *Id.* Accordingly, in cases involving a motion to withdraw a plea after sentencing, appellate review is limited to reviewing the record and determining whether the trial court abused its sound discretion in determining that no manifest injustice would occur if the defendant was

prohibited from withdrawing his or her plea. *State v. Lavy*, 121 Idaho 842, 844, 828 P.2d 871, 873 (1992).

There was no dispute that Conforti did not register as a sex offender. We have concluded, along with the district court, as a matter of law that Conforti was required to register as a sex offender despite the act of leniency by the Camas County district court in Case Number CR-96-00031. Because of our holding that Conforti was, in fact, required to register as a sex offender as a matter of law, if this was Conforti's basis for withdrawal of his guilty plea, it has no merit. We note, however, that Conforti's motion failed to state *any* basis for relief. Therefore, the district court did not abuse its discretion in denying Conforti's motion to withdraw his guilty plea.

C. Motion for Reconsideration

In his motion for reconsideration, Conforti asserted the same arguments regarding the denial of his motion for appointment of substitute counsel and again did not assert a basis to withdraw his guilty plea. Additionally, Conforti alleged appointed counsel had notified him in July 2007, that the Ada County Public Defender no longer represented him. This allegation is belied by the record which contains court filings by Conforti's appointed counsel in September 2007. Furthermore, because we previously determined the district court did not abuse its discretion in denying Conforti's motions for appointment of substitute counsel and to withdraw his guilty plea, we also conclude that the district court did not err in denying Conforti's motion for reconsideration.

III.

CONCLUSION

The Camas County district court's act of leniency under I.C. § 19-2604 in Case Number CR-96-00031 simultaneously vacated his guilty plea, but did not remove Conforti from the sex offender registration requirements. Thus, the district court did not err in denying Conforti's motion to dismiss Ada County Case Number H0500128. The district court did not abuse its discretion in denying Conforti's motion for appointment of substitute counsel because he made no showing of good cause to the district court. Further, the district court did not abuse its discretion in denying Conforti's motion to withdraw his guilty plea. Therefore, the district court did not abuse its discretion in denying Conforti's motion for reconsideration because he made no further showing of good cause or manifest injustice. Accordingly, Conforti's judgment of

conviction for failure to register as a sex offender and the district court's orders denying Conforti's motions for substitute counsel, to withdraw his guilty plea, and for reconsideration are affirmed.

Chief Judge GUTIERREZ and Judge LANSING, **CONCUR.**